Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Gogo Business Aviation LLC Request for	)	Docket No. _____
Waiver of 47 C.F.R. § 22.867 Applicable to the	)	
849-851 MHz and 894-896 MHz Bands	)	

GOGO BUSINESS AVIATION LLC REQUEST FOR WAIVER

Bill Gordon
GOGO BUSINESS AVIATION LLC
105 Edgeview Drive Suite 300
Broomfield, CO 80021

Michele C. Farquhar
Tom Peters
J. Ryan Thompson
HOGAN LOVELLS US LLP
555 Thirteenth St. NW
Washington, DC 20004
(202) 637-5600

Counsel to Gogo Business Aviation LLC

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GOGO BUSINESS AVIATION LLC REQUEST FOR WAIVER

Gogo Business Aviation LLC ("Gogo BA") requests a limited waiver of Section 22.867 of the Commission's rules, which governs effective radiated power ("ERP") limits for air-to-ground ("ATG") operations in the 849-851 MHz and 894-896 MHz bands ("800 MHz ATG Band").[1] Gogo BA's next-generation ATG system will deploy a new telecommunications standard using Orthogonal Frequency Division Multiplex technology ("OFDM") to improve throughput, coverage, and reliability for inflight connectivity to aircraft in the United States and Canada. A narrow waiver permitting the current ERP rules to be measured as limits on the maximum average power,[2] rather than peak power, will allow Gogo BA to maximize the utility of its next-generation system, similar to other mobile wireless licensees.

Grant of this limited waiver would align the Commercial ATG Service's power limits with the power limits of every other Part 22 mobile service, as well as every other similar mobile broadband service in Parts 24, 27, and 30. Furthermore, this change in power measurement

[1] *See* 47 C.F.R. § 22.867 (establishing ERP limits based on "peak" ERP).

[2] In the course of the Commission proceedings discussed below, "maximum power" and "average power" are used interchangeably to refer to "maximum average power." This submission uses the term "maximum average power" to refer to an average power measurement performed while the transmitter is operating at its maximum power (*i.e.*, excluding periods of inactivity).

would not present any risk of harmful interference. Because Gogo BA's transition to a new technology will bring important benefits to consumers that far outweigh the negligible risk of harmful interference, good cause supports granting this narrow waiver.[3] Finally, Gogo BA requests expedited consideration of this waiver by the middle of the first quarter of 2022 to avoid delaying its testing and deployment timeline.

I. GOGO BA USES THE 800 MHZ ATG BAND TO CONTINUALLY INNOVATE AND DELIVER CRITICAL BROADBAND CONNECTIVITY TO AIRCRAFT THROUGHOUT THE UNITED STATES AND CANADA.

Gogo BA is a leading provider of inflight connectivity and delivers Internet access to thousands of aircraft throughout the United States and Canada. Gogo BA provides a variety of airborne services, including broadband Internet, Wi-Fi-based entertainment services, interconnected and non-interconnected VoIP, inflight portals for e-commerce applications, and flight operations communications services. Gogo BA currently provides connectivity to about 5,800 commercial, business, and general aviation aircraft.[4] Gogo BA backhauls its ATG network traffic from aircraft through a network of about 260 base stations throughout the United States and Canada.[5]

A cornerstone of Gogo BA's operations is ensuring that it meets aircraft users' ever-increasing demand for broadband data and new types of broadband services. To meet this need,

[3] *See* 47 C.F.R. § 1.3 ("The provisions of this chapter may be . . . waived for good cause shown"); *see also* 47 C.F.R. § 1.925(b)(3) ("The Commission may grant a request for waiver if it is shown that . . . [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest.").

[4] Gogo Inc., Annual Report (Form 10-K), at 4 (Mar. 11, 2021) ("Gogo 10-K").

[5] *Id.* at 5.

Gogo BA is continually exploring new ways to expand capacity and more efficiently use its four megahertz of spectrum to deliver nationwide connectivity to thousands of aircraft.

In the course of these continual improvements, Gogo BA has determined that a transition from the Code Division Multiple Access Evolution-Data Optimized standard ("CDMA EV-DO") to a new telecommunications standard using OFDM will enhance Gogo BA's offerings. The new technology will allow Gogo BA to improve the throughput, coverage, and reliability of its nationwide broadband network with no material change in the interference environment in and near the 800 MHz ATG Band.

The COVID-19 pandemic caused a significant decline in international and domestic commercial and business aviation travel, which materially and adversely affected Gogo BA and its predecessor in interest Gogo LLC's (collectively, "Gogo's") business in 2020. Beginning in March 2020, Gogo saw a dramatic drop in commercial passenger traffic and a sharp decrease in general aviation flight activity, as well as an increase in requests for account suspensions and decreases in new plan activations. As a result, Gogo LLC was acquired by satellite operator Intelsat, which provides high-capacity Ka- and Ku-band satellite broadband service for commercial airliners.[6] While Gogo BA's current system has been sufficient to meet existing market demand, the new system is crucial for Gogo BA to maintain sufficient capacity to meet the expected and reemerging growth in the competitive general aviation market and regional commercial airline market.

[6] *See id.* at 20.

II. A LIMITED WAIVER OF SECTION 22.867 WOULD SERVE THE PUBLIC INTEREST BY PROMOTING INNOVATION AND RELIABILITY WITHOUT AN INCREASE IN THE RISK OF HARMFUL INTERFERENCE.

The Commission may grant requests for a waiver under Sections 1.3 and 1.925 of its rules if the petitioner demonstrates good cause.[7] Good cause exists "where particular facts would make strict compliance inconsistent with the public interest."[8] "To make this public interest determination, the waiver cannot undermine the purpose of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule."[9]

Gogo BA seeks a waiver of Section 22.867 of the Commission's rules to permit the current ERP limits to be measured as limits on the maximum average power, rather than peak power, of Gogo BA's next-generation 800 MHz ATG system.[10] Good cause exists to grant a waiver because strict application of the rule would be inconsistent with the public interest. A grant would serve the public interest by harmonizing this rule with other Part 22 services and with similar services in other rule parts, as well as with the Canadian ATG regulatory regime, with no discernible change in the risk of harmful interference to other licensed operations.

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[7] *See* 47 C.F.R. § 1.3; 47 C.F.R. § 1.925(b)(3)(i) ("The Commission may grant a request for waiver if it is shown that: [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest.").

[8] *ICO Global Communications (Holdings) Limited v. FCC*, 428 F.3d 264, 269 (D.C. Cir. 2005) (citing *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Ne. Cellular Tel. Co.*")).

[9] *Kyma Medical Technologies Ltd. Request for Waiver of Part 15 of the Commission's Rules Applicable to Ultra-Wideband Devices*, Order, 31 FCC Rcd 9705 ¶ 5 (2016) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("*WAIT Radio*")).

[10] *See* 47 C.F.R. § 22.867.

Section 22.867 requires that ERP limits in the 800 MHz ATG Band be measured as "peak ERP."[11] For non-constant envelope technologies, a regulatory limit on the peak ERP requires the average operational power to be lower than the required limit by the peak-to-average ratio ("PAR") of the technology used. Since OFDM-based waveforms typically have a higher PAR than other common waveforms, the current limit would result in an undue constraint on the average operational power for OFDM, which would unnecessarily hamper the overall utility of the service being delivered with no discernible reduction in the harmful interference risk to co-channel or adjacent-band operators. Indeed, Section 22.867 clashes with similar rules for every other mobile service in Part 22 and every other similar mobile broadband service in Parts 24, 27, and 30, all of which express transmitting power limits as average power.[12]

It is also not even clear whether the Commission intended the limits of Section 22.867 to be expressed as "peak ERP limits." When the Commission adopted service rules for the 800 MHz ATG Band, the Commission concluded that a "ground station *maximum* power limit" and "airborne mobile station *maximum* power" was the appropriate measurement for CDMA EV-DO and OFDM technologies.[13] The rule ultimately adopted, however, uses "peak ERP," and there does not appear to be any Commission clarification on the reason for this discrepancy. A waiver grant would also harmonize U.S. and Canadian ATG rules. Canada adopted "maximum" ERP limits when it harmonized its ATG regulations with Commission regulations.[14] Gogo BA

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[11] *See id.*

[12] *See, e.g.*, 47 C.F.R. §§ 24.232(d); 27.50(a)(1)(A); 30.202(a).

[13] *See Amendment of Parts 1 and 22 of the Commission's Rules To Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Automated Service*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4403 ¶ 58 (2005) ("*2005 AGRAS Order*") (emphasis added).

[14] *See Spectrum Utilization Policy and Consultation on a Framework to Auction Spectrum in the Bands 849–851 MHz and 894–896 MHz or Air-Ground Services*, DGRB-004-08, at 4-5 (Nov.

operates both in U.S. and Canadian airspace, and grant of the instant waiver request would remediate these inconsistencies and ease Gogo BA's multijurisdictional compliance obligations.

Waiver also would accord with Commission actions in similarly situated bands. In revising the radiated power rules for the Personal Communications Service ("PCS") and Advanced Wireless Service ("AWS"), the Commission concluded that, for non-constant envelope technologies such as CDMA, W-CDMA, and OFDM, measuring PCS and AWS power on an average basis would better predict the technologies' interference potential.[15] The record showed that "using peak power measurements for non-constant envelope technologies inaccurately suggests a much higher overall operational power, compared to actual power levels, due to power spikes."[16] Ultimately, the Commission found that the benefit of measuring existing non-constant envelope technologies, as well as similar future technologies, using a more realistic and appropriate technique outweighed the cost of any effective increase in power as a result of limiting power on an average basis.[17]

After the PCS and AWS service rule updates, the Commission then revised the power limits for the Cellular Service, first through waivers and then through a rulemaking.[18] In 2013,

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2008), *available at* https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/spectrumUtilPolicyAir-Ground-nov08-e.pdf/$FILE/spectrumUtilPolicyAir-Ground-nov08-e.pdf.

[15] *See Biennial Regulatory Review - Amendment of Parts 1, 22, 24, 27 and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, Third Report and Order, 23 FCC Rcd 5319 ¶ 40 (2008).

[16] *Id.*

[17] *Id.*

[18] *See Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area; Amendment of the Commission's Rules Governing Radiated Power Limits for the Cellular Service*, Second Report and Order, Report and Order and Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 2518 (2017) ("*Cellular Service R&O*").

AT&T sought waiver of Section 22.913 "to use the power spectral density [("PSD")] model for measuring ERP at a maximum ERP," which was intended to support wideband Long-Term Evolution ("LTE") operations.[19] The Commission granted several such waivers in Florida, Vermont, Missouri, and Kansas.[20] The waivers allowed AT&T to use a PSD limit instead of an absolute power limit to quickly and efficiently deploy LTE.[21]

Then, in the 2017 Cellular Service reform proceeding, the Commission concluded that using peak ERP for LTE and similar services would "place unachievable requirements on the measuring instrumentation."[22] The Commission determined that a maximum average ERP limit would better support new technologies like LTE without increasing the risk of harmful interference to other authorized services.[23] The Commission determined that the use of a PAR of 13 dB "would better enable the use of technologies such as LTE[] and that it strikes the right balance between enabling licensees to use modulation schemes with high PARs and protecting other licensees from high PAR transmissions."[24]

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[19] *Interim Waiver of 47 C.F.R. § 22.913 to Permit the Use of a Power Spectral Density Model for Certain Cellular Service Operations in Three Florida Markets*, Order, 29 FCC Rcd 11638, 11638, 11640 (2014) ("*Florida Waiver*").

[20] *Florida Waiver*; *Interim Waiver of 47 C.F.R. § 22.913 to Permit the Use of a Power Spectral Density Model for Certain Cellular Service Operations for Cellular Market 248-Burlington, VT*, Order, 29 FCC Rcd 11632 (2014); *Interim Waiver of 47 C.F.R. § 22.913 to Permit the Use of a Power Spectral Density Model for Certain Cellular Service Operations in Four Missouri Markets*, Order, 30 FCC Rcd 10765 (2015); *Interim Waiver of 47 C.F.R. § 22.913 to Permit the Use of a Power Spectral Density Model for Certain Cellular Service Operations in Seven Kansas Markets*, Order, 30 FCC Rcd 14495 ("*Kansas Waiver*").

[21] *Kansas Waiver* ¶ 5.

[22] *Cellular Service R&O* ¶ 94 ("Because the peak power associated with a noise-like signal is a random variable, it can place unachievable requirements on the measuring instrumentation (*e.g.*, a resolution/measurement bandwidth that exceeds the signal bandwidth).").

[23] *Id.*

[24] *Id.* ¶ 95.

Likewise here, waiver of Section 22.867 would enable equally innovative uses of the 800 MHz ATG Band. Gogo BA's transition to a new telecommunications standard using OFDM will enhance its offerings, including broadband Internet, Wi-Fi-based entertainment services, interconnected and non-interconnected VoIP, inflight portals for e-commerce applications, and flight operations communications services. Waiver would allow Gogo BA to improve the throughput, coverage, and reliability of its nationwide broadband network and ensure that it meets users' ever-increasing demand for broadband data and new types of broadband services.

Consistent with the *Cellular Service R&O* and service rules for other bands,[25] Gogo BA clarifies that it intends to maintain the maximum peak-to-average ratio of 13 dB and would accept this requirement as a condition of the waiver grant. This too will "strike[] the right balance between enabling [Gogo BA] to use modulation schemes with high PARs and protecting other licensees from high PAR transmissions."[26]

The purpose of Section 22.867—protecting other authorized services from harmful interference—would not be undermined by allowing Gogo BA to conduct power measurements in a manner consistent with other wireless services. Gogo BA's technology presents a low risk of interfering with other licensed operations. *First*, Gogo BA is the only ATG operator in the 800 MHz ATG Band, so there are no other ATG licensees to protect from harmful interference. *Second*, Gogo BA will continue to meet the out-of-band emissions limits specified in Section 22.861.[27] *Third*, it is improbable that transmissions from aircraft could cause receiver overload to Cellular Service devices receiving below 894 MHz or to Part 90 base stations receiving in the

[25] *See id.*; *see also, e.g.*, 47 C.F.R. § 27.50(a)(1)(B).

[26] *Cellular Service R&O* ¶ 95.

[27] *See* 47 C.F.R. § 22.861.

896-901 MHz band on the ground. Given the operating altitude of aircraft transmitters, path loss and antenna discrimination render the risk of receiver overload negligible. *Fourth*, receiver overload to adjacent services from a Gogo BA base station is also unlikely because Gogo BA operates a relatively small number of base stations compared to other wireless licensees[28] and Gogo BA base stations are more likely to be the victim in harmful interference scenarios and thus are generally sited to avoid other operators. For the limited number of ground stations that are collocated with or sited near base stations of adjacent-band mobile operators, Gogo BA can coordinate operations to further minimize any risk of harmful interference. In that regard, Gogo BA has a long history of responsible coordination relationships with adjacent-band wireless operators. Gogo noted the prospect of filing this waiver request as early as September 2019, when it raised potential interference concerns to its operations in the 896-901 and 935-940 MHz ("900 MHz") broadband reconfiguration proceeding.[29] Gogo's proposed power limit adjustment was unopposed by any party and even acknowledged by the very likely principal 900 MHz broadband entrant.[30]

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[28] Gogo BA operates 260 base stations nationwide, whereas typical nationwide terrestrial mobile providers operate well in excess of 50,000 base stations. *See supra* notes 4-5 and related discussion.

[29] Letter from Michele C. Farquhar, Counsel, Gogo Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-200, at 4-5 (filed Sept. 11, 2019) ("Adjusting Gogo's ATG mobile transmission power limits to a maximum ERP of 12 Watts (as opposed to peak ERP) would alter the measurement procedure such that the average power would increase by 5 dB. This higher average transmit power would help Gogo mitigate some of the anticipated interference caused by 900 MHz broadband deployments – without increasing the risk of harmful interference to adjacent services.").

[30] Letter from Elizabeth R. Sachs, Counsel, Anterix, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-200, at 2 (filed Nov. 6, 2019) ("The Anterix representatives reported that they are engaged in discussion with Gogo, Inc. in response to that entity's September 11, 2019 *ex parte* filing in this proceeding [raising interference concerns]."); *see also Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, Report and Order, Order of Proposed Modification, and Orders, 35 FCC Rcd 5183 ¶ 151 (2020) ("We expect 900 MHz broadband licensees and adjacent band licensees to work together to resolve any interference

As discussed above, the public interest clearly will be served by the rapid deployment of new inflight connectivity to aircraft in the United States and Canada. The waiver would also be consistent with the Commission's actions throughout the COVID-19 pandemic, which include the grants of dozens of waiver requests due to the unique, exigent circumstances created by the global health crisis.[31] Indeed, Gogo LLC's sale and Gogo BA's increased need for this waiver is largely attributable to circumstances arising from COVID-19.[32]

For all these reasons, there is good cause for the Commission to grant a waiver. And to facilitate rapid testing and deployment of the system, Gogo BA requests that the waiver go into effect by the middle of the first quarter of 2022. Gogo BA intends to begin system testing by the end of the first quarter of 2022, and so a waiver grant by the middle of this quarter should provide sufficient time for stakeholder feedback and Commission review without delaying Gogo BA's expeditious testing and deployment timeline.

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issues. In addition, we note that a broadband licensee has a wide range of situation-specific tools it may employ to avoid unacceptable interference (*e.g.*, spectral separation, filtering, base station locating, and co-locating sites), and we expect licensees to use these tools to resolve adjacent and/or in-band interference issues.").

[31] *See, e.g.*, *Lifeline and Link Up Reform and Modernization*, Order, 35 FCC Rcd 2729 ¶ 2 (2020) ("[I]n response to the public health emergency associated with the coronavirus COVID-19 pandemic, the Wireline Competition Bureau (Bureau) temporarily waives, on its own motion, the Lifeline program's recertification and reverification requirements for 60 days"); *see generally* Coronavirus, Federal Communications Commission, https://www.fcc.gov/coronavirus (last visited May 26, 2021) (cataloging the extensive regulatory relief the Commission has provided as a result of the COVID-19 pandemic).

[32] *See, e.g.*, Gogo 10-K at 16-17.

III. WAIVER IS THE APPROPRIATE VEHICLE FOR REGULATORY RELIEF, AND GOGO BA'S REQUEST SATISFIES THE COMMISSION'S WAIVER STANDARD.

A. The Commission Has Broad Authority to Provide Regulatory Relief Through Waiver Grant or Rule Adoption, and the Scope of Gogo BA's Request Demonstrates That Waiver Is the Appropriate Vehicle For Regulatory Relief.

The Commission is "charged with administration in the 'public interest.'"[33] The Commission's "discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure [*i.e.*, the waiver process] for consideration of an application for exemption based on special circumstances."[34] The Commission has explicitly rejected arguments that a waiver request is "*inapplicable* to services in which there is only one [licensee]"[35] and that such requests "should be treated as a petition for rulemaking."[36] Gogo BA is the only licensee in the 800 MHz ATG Band. Because this waiver request involves a particular, individualized case that need not carry over to potential future parties operating in this or different bands, a waiver grant, rather than a rulemaking, will more efficiently implement Commission policy for the reasons stated below and thus is the more appropriate vehicle for regulatory relief.

Waiver is appropriate because of the limited, unique circumstances. Gogo BA does not seek revisions that constitute a rule change affecting all potential future use of the 800 MHz ATG Band but instead requests a minor, modernizing accommodation that can be most efficiently

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[33] *WAIT Radio*, 418 F.2d at 1157.

[34] *Id.*

[35] *DISH Network Corporation Petition for Waiver of Sections 27.5(j) and 27.53(h)(2)(ii) of the Commission's Rules and Request for Extension of Time*, Memorandum Opinion and Order, 28 FCC Rcd 16787 ¶ 54 (2013) (emphasis added).

[36] *Id.* ¶ 50.

addressed through a waiver. The 800 MHz ATG Band comprises a mere four megahertz, which Gogo BA has the exclusive authority to use. There is no need to make sweeping rule revisions, which typically would affect multiple parties and are made through a lengthy rulemaking process that generally entails the preparation of a notice of proposed rulemaking, a comment cycle, and a Commission-level order.

When it revised the Commercial ATG Service rules in 2005, the Commission acknowledged the need to consider a waiver when "market conditions and other factors" warranted such action.[37] Citing changed market conditions, the Commission consolidated the three-megahertz license and the one-megahertz license into one four-megahertz license in the band. The Commission waived spectrum aggregation limits, allowing a single operator to hold licenses across the entire 800 MHz ATG Band.[38] Several court decisions and Commission precedent further highlight the Commission's authority to grant the instant waiver request to promote efficient use of spectrum.[39]

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[37] *See 2005 AGRAS Order* ¶ 42; *see also id.* ¶ 52 ("We seek to let marketplace forces, rather than prescriptive regulations, determine the highest valued air-ground service applications.").

[38] *See* Application of AC BidCo LLC, ULS File No. 0005185165 (filed May 4, 2012) (granting assignment of Call Sign WQFX729 from Live TV, LLC to AC BidCo LLC). And the Commission recently granted a waiver petition similar to the instant request, waiving certain technical rules (among others) to allow AURA Network Systems OpCo, LLC, the only operator in the relevant band, expanded flexibility in providing its primary and auxiliary operations. *See AURA Network Systems OpCo, LLC and A2G Communications, LLC Request for Waiver*, Order, 36 FCC Rcd 262 (2021).

[39] *See, e.g.*, *WAIT Radio* (holding that the FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest), appeal after remand, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Ne. Cellular Tel. Co.* (holding that a waiver of the Commission's rules may be granted when the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule); *2005 AGRAS Order* ¶¶ 2-3 (adopting rules for air-ground radiotelephone services in the 800 MHz Band designed to provide greater flexibility for licensees "to respond to evolving market demands" through deployment of both current and future technologies); *Application of AC BidCo, LLC, Gogo Inc., and LiveTV, LLC for Consent to Assign Commercial Aviation Air-Ground Radiotelephone (800*

These previous waiver grants also involve low-band spectrum where technical considerations first led the Commission to adopt licensing and technical limitations that dictated a particular regulatory structure that was no longer required or relevant by the time of the waiver grant. As discussed above, the Commission's waiver standard is satisfied here because a waiver would serve the public interest by removing an obsolete restriction that otherwise prevents Gogo BA from providing improved and valuable inflight connectivity, consistent with market demand and the technical standards allowed for similar mobile broadband service.

B. Gogo BA's Request Satisfies the Commission's Waiver Standard, and Thus a Rulemaking Is Not Required.

The Commission may grant a request for waiver if the applicant shows that: (1) "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest"; or (2) "[i]n view of the unique or unusual factual circumstances of the instant case, application of the rule(s) [identified for waiver] would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."[40]

MHz band) License, Memorandum Opinion and Order, 28 FCC Rcd 3362 ¶ 2 (2013) (granting waiver of certain spectrum aggregation, emission limitations, and frequency stability rules applicable to 800 MHz air-ground radiotelephone service licensees, finding that such waiver would not undermine the purpose of the rules and would result in a "a more productive use" and expand the public's access to additional services); *Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules,* Memorandum Opinion and Order, 24 FCC Rcd 8537 ¶ 12 (2009) (granting waiver and noting the licensee's plan for a "comprehensive deployment of a nationwide, fully integrated" system); *Hawaiian Wireless Partners,* Order, 11 FCC Rcd 21192 ¶ 12 (1996) (finding waiver warranted as it would enable the petitioner to implement digital SMR service, including construction of 33 new sites, and because "the [the petitioner's] plan does not prejudice any other existing or potential SMR licensees").

[40] 47 C.F.R. § 1.925(b)(3); *see also* 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."); *Ne. Cellular Tel. Co.* at 1166.

As detailed above, the Commission's waiver standard is satisfied here because a waiver would serve the public interest by removing an obsolete restriction that otherwise prevents Gogo BA from providing improved and valuable inflight connectivity.

IV. CONCLUSION.

Gogo BA's ATG operations serve the public interest by delivering critical broadband connectivity to aircraft flying throughout the United States and Canada. Waiver of Section 22.867 is necessary to allow Gogo BA to continue its path of innovating through the deployment of new non-constant envelope technologies to efficiently use this narrow 800 MHz ATG Band. Gogo BA's compliance with other Commission rules will ensure there is no increased risk of harmful interference, and thus a waiver of Section 22.867 will not undermine the rule's purpose.

Respectfully submitted,

/s/ Michele C. Farquhar

Michele C. Farquhar
Tom Peters
J. Ryan Thompson
HOGAN LOVELLS US LLP
555 Thirteenth St. NW
Washington, DC 20004
(202) 637-5600

Counsel to Gogo Business Aviation LLC

Bill Gordon
GOGO BUSINESS AVIATION LLC
105 Edgeview Drive Suite 300
Broomfield, CO 80021

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